

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JEFFREY H. WALDEN, Individually and on  
Behalf of All Other Persons Similarly Situated,

Plaintiff,

Case No.:  
14-CV-00112 (ER)

v.

**ANSWER**

SANITATION SALVAGE CORP., ANDREW  
SQUITIERI, JOHN SQUITIERI, and STEVE  
SQUITIERI, Jointly and Severally,

Defendants.  
-----X

Defendants, SANITATION SALVAGE CORP., ANDREW SQUITIERI, JOHN SQUITIERI, and STEVE SQUITIERI (collectively referred to herein as “Defendants”), by their attorneys, TRIVELLA & FORTE, LLP, as and for their Answer and affirmative defenses to the Complaint, hereby admit, deny and allege as follows:

1. Defendants deny the allegations set forth in paragraph “1” of the Complaint, except admit that Plaintiff purports to bring this action under the Fair Labor Standards Act (“FLSA”).
2. Defendants deny the allegations set forth in paragraph “2” of the Complaint, except admit that Plaintiff purports to bring this action under the New York Labor Law (“NYLL”).
3. The allegations contained within paragraph “3” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response, the Defendants deny the paragraph.

4. The allegations contained within paragraph “4” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response, the Defendants deny the paragraph.
5. The allegations contained within paragraph “5” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response, the Defendants deny the paragraph.
6. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “6” of the Complaint.
7. Defendants admit the allegations contained within paragraph “7” of the Complaint.
8. Defendants deny the allegations set forth in paragraph “8” of the Complaint, except admit that it is engaged in commerce and that its volume of business is at least \$500,000.
9. Defendants deny the allegations set forth in paragraph “9” of the Complaint.
10. Defendants admit the allegations set forth in paragraph “10” of the Complaint.
11. Defendants deny the allegations set forth in paragraph “11” of the Complaint.
12. Defendants admit the allegations set forth in paragraph “12” of the Complaint.
13. Defendants deny the allegations set forth in paragraph “13” of the Complaint.
14. Defendants admit the allegations set forth in paragraph “14” of the Complaint.
15. Defendants deny the allegations set forth in paragraph “15” of the Complaint.
16. Defendants deny the allegations set forth in paragraph “16” of the Complaint, except admit that Plaintiff purports to prosecute his FLSA claims as a collective action.
17. Defendants deny the allegations set forth in paragraph “17” of the Complaint.
18. Defendants deny the allegations set forth in paragraph “18” of the Complaint.

19. Defendants deny the allegations set forth in paragraph “19” of the Complaint.
20. Defendants deny the allegations set forth in paragraph “20” of the Complaint including all the subparagraphs of that paragraph.
21. Defendants deny the allegations set forth in paragraph “21” of the Complaint.
22. Defendants deny the allegations set forth in paragraph “22” of the Complaint.
23. Defendants deny the allegations set forth in paragraph “23” of the Complaint.
24. Defendants deny the allegations set forth in paragraph “24” of the Complaint.
25. Defendants deny the allegations set forth in paragraph “25” of the Complaint.
26. Defendants deny the allegations set forth in paragraph “26” of the Complaint.
27. Defendants deny the allegations set forth in paragraph “27” of the Complaint.
28. Defendants deny the allegations set forth in paragraph “28” of the Complaint including all the subparagraphs of that paragraph.
29. Defendants admit the allegations set forth in paragraph “29” of the Complaint.
30. Defendants admit that the referenced quotation is contained within the Defendant Sanitation Salvage Corp. website but deny that said quotation has any legal import to this action.
31. Defendants admit the allegations set forth in paragraph “31” of the Complaint.
32. Defendants deny the allegations set forth in paragraph “32” of the Complaint, except admit that from June 17, 2011 until February 16, 2013 Plaintiff was employed by Sanitation Salvage as a helper.
33. Defendants deny the allegations set forth in paragraph “33” of the Complaint, except admit that Plaintiff Walden was employed by Defendant Sanitation Salvage Corp. as a Helper.

34. Defendants deny the allegations set forth in paragraph “34” of the Complaint.
35. Defendants deny the allegations set forth in paragraph “35” of the Complaint.
36. Defendants deny the allegations set forth in paragraph “36” of the Complaint.
37. Defendants deny the allegations set forth in paragraph “37” of the Complaint.
38. Defendants admit the allegations set forth in paragraph “38” of the Complaint.
39. Defendants deny the allegations set forth in paragraph “39” of the Complaint.
40. Defendants deny the allegations set forth in paragraph “40” of the Complaint.
41. Defendants deny the allegations set forth in paragraph “41” of the Complaint.
42. Defendants deny the allegations set forth in paragraph “42” of the Complaint.
43. Defendants deny the allegations set forth in paragraph “43” of the Complaint.
44. Defendants deny the allegations set forth in paragraph “44” of the Complaint, except admit that Plaintiff Walden was compensated by Sanitation Salvage at an hourly rate of pay.
45. Defendants deny the allegations set forth in paragraph “45” of the Complaint.
46. Defendants deny the allegations set forth in paragraph “46” of the Complaint.
47. Defendants deny the allegations set forth in paragraph “47” of the Complaint.
48. Defendants admit the allegations set forth in paragraph “48” of the Complaint.
49. Defendants admit the allegations set forth in paragraph “49” of the Complaint.
50. Defendants deny the allegations set forth in paragraph “50” of the Complaint.
51. Defendants deny the allegations set forth in paragraph “51” of the Complaint, except admit that Plaintiff was paid weekly by Sanitation Salvage.
52. Defendants deny the allegations set forth in paragraph “52” of the Complaint.
53. Defendants deny the allegations set forth in paragraph “53” of the Complaint.

54. Defendants deny the allegations set forth in paragraph “54” of the Complaint.
55. Defendants deny the allegations set forth in paragraph “55” of the Complaint.
56. Defendants deny the allegations set forth in paragraph “56” of the Complaint.
57. Defendants deny the allegations set forth in paragraph “57” of the Complaint.
58. Defendants deny the allegations set forth in paragraph “58” of the Complaint.
59. Defendants deny the allegations set forth in paragraph “59” of the Complaint.
60. Defendants repeat and reallege each and every response to paragraphs “1” through “59” of the Complaint as if fully set forth herein.
61. The allegations contained within paragraph “61” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response, the Defendants deny the paragraph.
62. The allegations contained within paragraph “62” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response, the Defendants deny the paragraph.
63. Defendants deny the allegations set forth in paragraph “63” of the Complaint, except admit that Sanitation Salvage has gross revenues in excess of \$500,000.
64. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “64” of the Complaint. Defendants respectfully refer the Court to the documents referred to in paragraph “64” of the Complaint for its true content and meaning.
65. Defendants deny the allegations set forth in paragraph “65” of the Complaint and respectfully refer the Court to the statutes referenced in paragraph “65” for their true content and meaning.

66. Defendants deny the allegations set forth in paragraph “66” of the Complaint.
67. Defendants deny the allegations set forth in paragraph “67” of the Complaint.
68. Defendants deny the allegations set forth in paragraph “68” of the Complaint.
69. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “69” of the Complaint, except Defendants deny Plaintiffs were not paid overtime for hours above forty in a week and respectfully refer the Court to the Complaint for its true content and meaning.
70. Defendants deny the allegations set forth in paragraph “70” of the Complaint.
71. Defendants deny the allegations set forth in paragraph “71” of the Complaint.
72. Defendants deny the allegations set forth in paragraph “72” of the Complaint.
73. Defendants deny the allegations set forth in paragraph “73” of the Complaint.
74. Defendants repeat and reallege each and every response to paragraphs “1” through “73” of the Complaint as if fully set forth herein.
75. The allegations contained within paragraph “75” of the Complaint set forth legal conclusions for which no response is required. To the extent the Court requires a response, the Defendants deny the paragraph.
76. Defendants deny the allegations set forth in paragraph “76” of the Complaint and respectfully refer the Court to the statutes and regulations referenced in paragraph “76” for their true content and meaning.
77. Defendants deny the allegations set forth in paragraph “77” of the Complaint.
78. Defendants deny the allegations set forth in paragraph “78” of the Complaint.
79. Defendants deny the allegations set forth in paragraph “79” of the Complaint.
80. Defendants deny the allegations set forth in paragraph “80” of the Complaint.

81. Defendants deny the allegations set forth in paragraph “81” of the Complaint.
82. Defendants deny the allegations set forth in paragraph “82” of the Complaint.
83. Defendants repeat and reallege each and every response to paragraphs “1” through “82” of the Complaint as if fully set forth herein.
84. Defendants deny the allegations set forth in paragraph “84” of the Complaint.
85. Defendants deny the allegations set forth in paragraph “85” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

86. Plaintiff is subject to the exemptions to the maximum hour requirements, including the motor carrier exemption, as set forth in the Fair Labor Standards Act. 29 U.S.C. Section 213(b) (1) and New York Labor Law.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

87. The claims set forth in the Complaint fail to state a cause of action for which relief may be granted.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

88. To the extent the Complaint seeks damages more than 2 years prior to the interposition of the Complaint or other statutory limitations of time, the claims are barred by the applicable Statute of Limitations. 29 U.S.C. Section 255.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

89. To the extent Plaintiff was a manager or supervisor or otherwise exempt from the Fair Labor Standards Act pursuant to 29 U.S.C. Section 213 or New York Labor Law Defendants would not be required to pay overtime/spread of hours compensation to the Plaintiff and would not otherwise be liable to the Plaintiff.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

90. To the extent Plaintiff did not work more than forty hours in a given week or more than ten hours on a given day or otherwise did not work more than the hours specified in 29 U.S.C. section 207(a) (1) or New York Labor Law governing spread of hours/overtime Plaintiff is not entitled to overtime/spread of hours pay.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

91. The Court lacks subject matter jurisdiction over the Defendants.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

92. The state law class action claims alleged in the Second and Third Causes of Action in the Complaint are subject to dismissal as preempted or otherwise procedurally inconsistent with the Fair Labor Standards Act, and pendent jurisdiction does not apply and/or is inappropriate with respect to these causes of action.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

93. Plaintiff fails to state a cognizable legal claim against the individual Defendants.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

94. Attorneys' fees and expert fees are inappropriate relief.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

95. Defendants have paid Plaintiff all sums due and owing to Plaintiff.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

96. Plaintiff lacks the capacity to sue in a representative capacity and otherwise does not meet federal and state procedural requirements for maintaining a class or collective action.



**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

97. Plaintiff has failed to exhaust his contractual and arbitral remedies prior to commencing this litigation.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

98. Plaintiff has failed to mitigate his damages.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

99. Any damages Plaintiff suffered were the result of Plaintiff's own conduct or the conduct of third parties and not the result of the Defendants' actions.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

100. The class Plaintiffs are not similarly situated and otherwise fail to satisfy the requirements of 29 U.S.C. §216 and FRCP 23. Plaintiff's class causes of action are dismissible as inconsistent with the Fair Labor Standards Act collective action procedure.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

101. Defendants acted at all times in good faith and had reasonable grounds for its pay practices and its belief that such practices complied with the FLSA and New York Law.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

102. Even if Defendants are deemed to be liable for any amounts under the FLSA, Plaintiffs claims for relief are barred in whole or in part by the *de minimis* doctrine.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

103. Defendants did not engage in willful or unlawful conduct.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

104. Plaintiff's reservation of a claim for liquidated damages in the state class causes of action is inconsistent with and barred by applicable state and federal case law and statute.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

105. To the extent Plaintiff or any putative Plaintiff is an illegal immigrant that Plaintiff is not entitled to back pay the Plaintiff would not be permitted to work under the Immigration Reform and Control Act of 1986 ("IRCA") and therefore was unavailable for work during the period of illegal status. *Sure-Tan v. NLRB*, 467 U.S. 883(1984), *NRLB v Apra Fuel*, 134 F.3d 50 (2d Cir. 1997) (back pay allowed only upon compliance with IRCA's verification requirements).

**WHEREFORE**, having fully answered all the counts of the Complaint, Defendants respectfully demand judgment:

- (a) Dismissing the Complaint in its entirety; and
- (b) for the costs, attorneys' fees and disbursements of this action; and
- (c) such other and different relief as the Court may deem just and proper.

Dated: March 7, 2014  
White Plains, New York

Yours, etc.,  
TRIVELLA & FORTE, LLP

/s/Christopher Smith  
By: Christopher Smith (CS 9014)  
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*Attorneys for Plaintiff Walden and the Putative Class Members*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 7, 2014, I served the foregoing ANSWER on Douglas Lipsky, Esq. of Bronson Lipsky, LLP and upon Jeffrey M. Gottlieb, Esq. and Dana L. Gottlieb, Esq. of Gottlieb & Associates, Attorneys for Plaintiff, Walden and the Putative Class Members, by means of the Court's Electronic Case Filing (ECF) System in the matter of Walden et al. v. Sanitation Salvage Corp. et al., 14-CV-00112 (ER).

TRIVELLA & FORTE, LLP

/s/Christopher Smith

By: Christopher Smith (CS 9014)

Jonathan Bardavid (JB 0072)

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